

plan, and such levels of maintenance are justified.

(e) Once the time period for the initial or extended levels of maintenance and repair expires, the Secretary concerned will reduce the levels of maintenance and repair to levels consistent with Federal Government standards for excess and surplus properties as provided in the Federal Management Regulations of the GSA, except in the case of facilities still being used to perform a DoD mission.

Subpart G—Environmental Matters

§ 174.15 Indemnification under Section 330 of the National Defense Authorization Act for Fiscal Year 1993.

Section 330 of the National Defense Authorization Act for Fiscal Year 1993, Pub. L. 102-484, as amended, provides for indemnification of transferees of closing Department of Defense properties under circumstances specified in that statute. The authority to implement this provision of law has been delegated by the Secretary of Defense to the General Counsel of the Department of Defense; therefore, this provision of law shall only be referred to or recited in any deed, sales agreement, bill of sale, lease, license, easement, right-of-way, or transfer document for real or personal property after obtaining the written concurrence of the Deputy General Counsel (Environment and Installations), Office of the General Counsel, Department of Defense.

§ 174.16 Real property containing explosive or chemical agent hazards.

The DoD Component controlling real property known to contain or suspected of containing explosive or chemical agent hazards from past DoD military munitions-related or chemical warfare-related activities shall, prior to transfer of the property out of Department of Defense control, obtain the DoD Explosives Safety Board's approval of measures planned to ensure protectiveness from such hazards, in accordance with DoD Directive 6055.9E, *Explosives Safety Management and the DoD Explosives Safety Board*.

§ 174.17 NEPA.

At installations subject to this part, NEPA analysis shall comply with the promulgated NEPA regulations of the Military Department exercising real property accountability for the installation, including any requirements relating to responsibility for funding the analysis. See 32 CFR parts 651 (for the Army), 775 (for the Navy), and 989 (for the Air Force). Nothing in this section shall be interpreted as releasing a Military Department from complying with its own NEPA regulation.

§ 174.18 Historic preservation.

(a) The transfer, lease, or sale of National Register-eligible historic property to a non-Federal entity at installations subject to this part may constitute an "adverse effect" under the regulations implementing the National Historic Preservation Act (36 CFR 800.5(a)(2)(vii)). One way of resolving this adverse effect is to restrict the use that may be made of the property subsequent to its transfer out of Federal ownership or control through the imposition of legally enforceable restrictions or conditions. The Secretary concerned may include such restrictions or conditions (typically a real property interest in the form of a restrictive covenant or preservation easement) in any deed or lease conveying an interest in historic property to a non-Federal entity. Before doing so, the Secretary should first consider whether the historic character of the property can be protected effectively through planning and zoning actions undertaken by units of State or local government; if so, working with such units of State or local government to protect the property through these means is preferable to encumbering the property with such a covenant or easement.

(b) Before including such a covenant or easement in a deed or lease, the Secretary concerned shall consider—

(1) Whether the jurisdiction that encompasses the property authorizes such a covenant or easement; and

(2) Whether the Secretary can give or assign to a third party the responsibility for monitoring and enforcing such a covenant or easement.